

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of Southern California Gas Company (U 904 G) and San Diego Gas & Electric Company (U 902 M) for Authority to Continue Funding of LEV Programs.

Application 02-03-047

Application of Southern California Edison Company (U 338 E) to extend the Operation of its Electric Vehicle Adjustment Clause Mechanism and Related Accounts Until the Date of the Commission's Final Decision in SCE's Test Year 2003 General Rate Case Proceeding.

Application 02-03-048

Application of Pacific Gas and Electric Company for Review of and Authorization for Recovery of Cost Relating to its Low Emission Vehicle (LEV) Program for 2002 through 2005. (U 39 E)

Application 02-03-049

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER  
AND ADMINISTRATIVE LAW JUDGE RULING**

**Summary**

Pursuant to Rules 6(b)(3) and 6.3 of the Rules of Practice and Procedure,<sup>1</sup> this ruling sets forth the procedural schedule, designates the principal hearing

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<sup>1</sup> Unless otherwise indicated, all citations to sections refer to the Public Utilities Code and citations to rules refer to the Commission Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

officer, and addresses the scope of the proceeding following a prehearing conference (PHC) held on May 21, 2002.

## **Background**

On March 25, 2002, Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) filed joint Application (A.) 02-03-047, Southern California Edison Company (Edison) filed A.02-03-048, and Pacific Gas and Electric Company (PG&E) filed A.02-03-049 all seeking Commission authorization of continued funding for their respective low emission vehicle (LEV) programs. LEV funding for the utilities had been authorized in Decision (D.) 95-11-035, but the funding expired by the terms of the decision on December 21, 2001. The Commission issued Resolution G-3322 to extend the LEV funding programs through December 31, 2002, and the resolution also directed the utilities to file the March 25, 2002, applications to revisit funding of the utilities' LEV programs.

The Office of Ratepayer Advocates (ORA) filed a separate protest to each application, and Western States Petroleum Association (WSPA) filed a petition to intervene and protest to each application.<sup>2</sup> The utilities filed responses to the protests.

A PHC was held on May 21, 2002, and prior to that proceeding, the parties conducted a meet-and-confer telephone conference<sup>3</sup> to discuss topics to be included in this proceeding and a procedural schedule. The applicants each filed

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<sup>2</sup>WSPA filed its documents on May 3, 2002, but the filings failed to comply with the Commission's Rules, so the filings were not docketed until a later date.

<sup>3</sup> The four applicant utilities met on May 10, 2002, for a meet-and-confer telephonic conference, and then telephonically met again on May 13, 2002, to include ORA and WSPA.

a PHC Statement setting forth anticipated issues and two proposed procedural schedules: one with evidentiary hearings and one without. Initially, SoCalGas, SDG&E, and Edison stated in their respective applications that hearings would not be necessary, but PG&E anticipated that hearings would probably be necessary. After receiving the protests of ORA and WSPA, it is evident that hearings are necessary.

At the PHC, appearances were taken, parties stated their respective positions and the issues of concern to them in this proceeding, WSPA's motion, and all other requests to intervene, were granted, a service list for the proceeding was established, and the proposed procedural schedule was adopted.

**Request for Briefing re: USA Waste of California, Inc.**

On February 11, 2002, USA Waste of California, Inc.,<sup>4</sup> (WMI) filed a petition to modify D.95-11-035. WMI's petition requested funding for its liquefied natural gas (LNG) pilot program for the research and development of the conversion of landfill gas to LNG. Because the funding authorized by D.95-11-035 had already expired by terms of the decision, WMI's petition to modify D.95-11-035 was denied. WMI was instructed to file the petition in A.02-03-047, and WMI's request for funding of its LNG program is incorporated into this consolidated application proceeding.

At the PHC, WMI requested a separate procedural track for addressing the issues that are peculiar to WMI's situation. In particular, WMI requested an expedited schedule since part of its funding expires in December 2002. Other

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<sup>4</sup> USA Waste of California, Inc. is a wholly-owned subsidiary of Waste Management, Inc. Hereinafter, USA Waste and Waste Management, Inc. are collectively referenced as WMI.

parties were given until May 31, 2002<sup>5</sup> to weigh in on whether WMI's issues on natural gas can be scheduled on a separate track from the utilities' LEV matters.

ORA does not oppose having WMI's issues handled on an expedited schedule, but PG&E, SoCalGas, and SDG&E raised concerns about both WMI's request for priority scheduling as well as for the substance of WMI's petition.

To address the substantive issues related to WMI's involvement in this proceeding, we are requesting that WMI brief the jurisdictional issue. Specifically, WMI is to brief under what legal authority and public policy justification does the Commission have jurisdiction to hear WMI's request for funding of its LNG pilot program from utility ratepayers. WMI's brief is due July 12, 2002, and reply briefs, although not required, will be allowed, and are due July 25, 2002. If the Commission determines it does have jurisdiction to hear WMI's funding request, a ruling will issue on the procedural schedule.

### **Consolidation and Bifurcation**

Resolution G-3322 extended the utilities' LEV funding through 2002 and instructed the utilities to file their applications on March 25, 2002. Each utility is in a unique position vis-à-vis its LEV program and its funding requests. Therefore, it was appropriate that the separate applications were filed. Edison (A.02-03-048), and SoCalGas and SDG&E (A.02-03-047) only requested interim funding until their upcoming General Rate Cases (GRC) are decided. Edison has already filed its GRC application for test year (TY) 2003 (A.02-05-004) and included LEV funding. SoCalGas and SDG&E intend to request LEV funding in their TY 2004 Performance Based Ratemaking (PBR) applications due December 21, 2002. PG&E (A.02-03-049) is seeking funding through 2005 and included in

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<sup>5</sup> The May 31, 2002, deadline was extended until June 7, 2002.

its application the LEV funding request that will be included in its Results of Operations (RO) to be submitted in its TY 2003 GRC, to be filed soon.

Because of the different approaches the utilities took in filing their applications for LEV funding, the merits of LEV activities could end up being reviewed both in this proceeding, as well as in the respective GRCs for the utilities. It is conceivable that inconsistent results could occur if each utility's funding request is reviewed by a different administrative law judge (ALJ) and at separate times. There is also a concern that, because of the complexity of the GRCs, LEV activities may not receive the same level of scrutiny in a GRC that they would in a separate, dedicated proceeding.

We want to avoid undue duplication of effort by both the utilities and the Commission that would result from having LEV funding reviewed in both this proceeding and the utility's GRC. We want to prevent inconsistent results, yet adequately address the distinct funding requests of the different utilities. For these reasons, we will bifurcate mandatory and discretionary LEV activities. Mandatory activities relate directly to meeting the utilities' traditional public utility service obligations, whereas discretionary activities are extraneous to the provision of traditional public utility service. Mandatory activities are better suited for a GRC proceeding, while discretionary activities can be appropriately evaluated through a more focused venue such as this proceeding. All of the separate applications are consolidated for the treatment of the discretionary activities, whereas the longer-term mandatory activities will be treated individually for each utility in their respective GRCs, and not in this proceeding.

#### **Mandatory Activities**

Except to the extent the following activities are addressed in the interim period, Edison, SoCalGas and SDG&E will include the following activities for consideration in their upcoming GRCs or cost-of-service proceedings, while all

proposed activities falling outside these bounds will be addressed in this proceeding. PG&E should shift its long-term request for funding of its mandatory activities into its GRC.

During the interim period, PG&E, as well as the other utilities, will have their LEV funding capped under the provisions of Resolution G-3322.

- Acquisition of alternative fuel use fleet vehicles pursuant to federal law. [Energy Policy Act of 1992 (Pub. L. 102-486) requires energy utilities to purchase 90% of their newly acquired light duty vehicles for model year 2000 that are alternative fueled vehicles (10 CFR Ch. 11, Part 490, sec. 490.302 and 490.307).]
- Operation and maintenance costs associated with use of alternative fuel use fleet vehicles and associated infrastructure.
- Infrastructure (fueling facilities and related equipment) needed to support alternative fuel use fleet vehicles.
- Employee training and instruction necessary for the use of alternative fuel use fleet vehicles.
- Accounting for the costs of these mandatory activities.

### **Discretionary Activities**

All other LEV activities not identified as “mandatory,” such as customer education, training, and research and development (R&D), will be addressed in this proceeding. In addition, the appropriateness of past LEV programs will also be reviewed in this proceeding for the purpose of determining what activities should continue in the future.

### **Amended Applications**

Edison, and SoCalGas and SDG&E are to amend their applications to include a funding request for the discretionary activities that would be considered in their current/upcoming GRCs. PG&E was the only utility that

included sufficient information and data on future funding requests in its application. The other utilities focused primarily on bridge funding.

### **Scope of the Proceeding**

This proceeding will address the specific level of funding approved under Resolution G-3322 for each utility.

The major focus of this proceeding, however, will be on reviewing the appropriateness of past LEV discretionary programs and on developing criteria for evaluating when, and to what extent, ratepayers should continue funding discretionary LEV activities. As part of this scrutiny, the Commission will speak to the following issues as they relate to discretionary activities:

- do the overall ratepayer benefits justify the cost of the program;
- are the utilities the proper entity to be engaged in R&D and consumer education for LEVs;
- what is the appropriate scope and scale of the LEV program;
- would the ratepayer be harmed if the funding for discretionary LEV programs was curtailed;
- is it proper to use ratepayer funds for discretionary activities, or should the utilities use their public purpose program charge;
- are there alternative sources of financing, such as shareholder contributions, or partnerships with educational and/or private research facilities, that can and should be explored for the funding of the discretionary programs.
- what can we learn from a review of past program expenditures and activities that would inform appropriate program elements going forward?

This list is not meant to foreclose the inclusion of additional topics as they arise during the course of discovery and preparation for the evidentiary hearings.

### **Discovery**

The Commission will not impose a discovery plan on the parties to these application proceedings. Proponents may make reasonable discovery requests and recipients should strive to comply with them, both in a timely fashion. The parties should attempt to resolve any discovery disputes with a good faith meet and confer. If that attempt does not resolve the dispute, the parties are to either e-mail or conference call the ALJ for resolution of the dispute. Written motions may only be filed if the parties' meet- and-confer session and the ALJ's conference are both unsuccessful in resolving the dispute. The Commission generally looks to the California Code of Civil Procedure for guidance in resolving discovery disputes. The ALJ's e-mail address is cab@cpuc.ca.gov.

### **Schedule**

The following procedural schedule proposed by the parties in their PHC statement, as amended to accommodate the Commissioner and the ALJ's schedule, is adopted.

<b>Date</b>	<b>Event</b>
July 8, 2002	Amended Applications
July 22, 2002	ORA and Intervenor Testimony
August 5, 2002 <sup>6</sup>	Utility Rebuttal Testimony
August 19-23, 2002	Evidentiary Hearings

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<sup>6</sup> Changed from July 23, 2002 to July 30, 2002 at the request of PG&E.



September 17, 2002	Concurrent Opening Briefs
October 1, 2002	Concurrent Reply Briefs

### **Hearing Preparation**

The parties are ordered to hold a pre-hearing meet-and-confer session<sup>7</sup> (pursuant to Rule 49 of the Rules of Practice and Procedure) no later than August 14, 2002, for the purpose of identifying the principal issues on which the hearings will focus, key disputes, and any stipulations or settlements. To the extent feasible, parties should exchange exhibits in advance of this meet and confer so any objections can be addressed at that time. The numbering system for exhibits is as follows: SDG&E and SoCalGas, 1-99; Edison, 100-199; PG&E, 200-299; ORA, 300-399; WSPA, 400-499; WMI, 500-599; Southern California Generation Coalition (SCGC), 600-699; Natural Resources Defense Council, 700-799; CALSTART, 800-899; Liberty Fuels, 900-999; South Coast Air Quality Management District, 1,000-1099; California Energy Commission, 1100-1199; and California Air Resources Board, 1200-1299. If additional parties join the proceeding, numbers may be allocated at the prehearing meet-and-confer.

Parties should also use the meet-and-confer to discuss witness schedules, time estimates from each party for cross-examination, scheduling concerns, and the order of cross-examination. The first morning of hearings on August 19 will begin at 10:00 a.m., but the time may be adjusted on subsequent days according to the participants' needs.

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<sup>7</sup> The parties may meet telephonically if it is more convenient than an in-person meeting.

Parties should serve, but not file, proposed testimony and rebuttal testimony. Before post-hearing briefs are filed, the parties must agree on an outline, and use that outline for the briefs and reply briefs.

Finally, the parties should comply with the Hearing Room Ground Rules set forth in Appendix A hereto.

### **Category of Proceeding and Need for Hearing**

This ruling confirms this case as ratemaking scheduled for hearing.

### **Principal Hearing Officer**

In accordance with Rule 5(k) and (l) of the Commission's Rules, ALJ Carol Brown is designated as the principal hearing officer for this proceeding.

### **Ex Parte Rules**

Ex parte communications in this ratemaking proceeding are subject to Section 1701.3(c) and Rule 7(a)(1) and (c).

### **Service List**

The official service list is now on the Commission's web page. Each party should confirm that the information shown for that party on the service list and the comma-delimited file is correct, and serve notice of any errors on the Commission's Process Office, the service list, and the ALJ. Parties shall e-mail courtesy copies of all served and filed documents on the entire service list, including those appearing on the list as "State Service" and "Information Only."

### **IT IS RULED that:**

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is set forth herein.
3. The principal hearing officer in this proceeding pursuant to Rules 5(k) and (l) is Administrative Law Judge Carol Brown.

4. This ruling confirms that this proceeding is ratemaking and is scheduled for hearing.

5. Ex parte communications are subject to Pub. Util. Code § 1701.3(c) and Rule 7(a)(1) and (c) of the Commission's Rules of Practice and Procedure.

6. Parties shall follow the service list rules as set forth herein.

7. Parties shall comply with the Hearing Room Ground Rules set forth in Appendix A hereto.

8. USA Waste of California, Inc. (WMI) is directed to brief under what legal authority does the Commission have jurisdiction to hear WMI's request for ratepayer funding for its liquefied natural gas pilot program.

9. PG&E should include its longer-term LEV mandatory proposal in its TY 2003 GRC.

10. Southern California Edison Company, Southern California Gas Company and San Diego Gas & Electric Company are to amend their respective applications to include funding requests for future discretionary activities.

Dated June 26, 2002, at San Francisco, California.

/s/ CARL WOOD  
Carl Wood  
Assigned Commissioner

/s/ CAROL A. BROWN  
Carol A. Brown  
Administrative Law Judge

## **Appendix A**

### **Hearing Room Ground Rules**

1. All prepared written testimony should be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Prepared written testimony shall not be filed with the Commission's Docket Office.
2. Each party sponsoring an exhibit should, in the hearing room, provide two copies to the ALJ and one to the court reporter, and have copies available for distribution to parties present in the hearing room. (Present estimate: 15 copies.) The upper right hand corner of the exhibit cover sheet should be blank for the ALJ's exhibit stamp. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the exhibit.
3. As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction.
4. Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.
5. Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. For example, Exhibit 5-A is the first correction to Exhibit 5.
6. Individual chapters of large, bound volumes of testimony may be marked with separate exhibit numbers, as convenient.
7. Partial documents or excerpts from documents must include a title page or first page from the source document; excerpts from lengthy documents should include a table of contents page covering the excerpted material.
8. Motions to strike prepared testimony must be made at least two working days before the witness appears, to allow the ALJ time for review of the arguments and relevant testimony.
9. Notices, compliance filings, or other documents may be marked as reference items. They need not be served on all parties. Items will be marked using letters, not numbers.
10. No food is allowed in the hearing room; drinks are allowed if you dispose of containers and napkins every morning and afternoon.

**(End of Appendix A)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated June 26, 2002, at San Francisco, California.

/s/ ERLINDA PULMANO  
Erlinda Pulmano

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.